

107 LRP 1829

***Department of Justice, Federal Bureau of Prisons, U.S. Penitentiary  
Victorville, Calif. and Local 3969, American Federation of Government  
Employees, AFL-CIO***

Federal Service Impasses Panel

06 FSIP 101

January 11, 2007

## **Related Index Numbers**

[1.20 Authority and Duties, Authority over Impasses](#)

[1.201 Authority and Duties, Authority over Impasses, Federal Service Impasses Panel](#)

[44.3 Conditions of Employment](#)

[44.32 Conditions of Employment, Schedule](#)

[44.322 Conditions of Employment, Schedule, Compressed Workweek](#)

[51.3 Federal Service Impasses Panel](#)

## **Ruling**

In an impasse not governed by the work schedules act, the FSIP found the union's proposal for a six month test of a 4/10 compressed schedule preferable to the agency's proposed limited test of a 5-4/9 schedule.

## **Meaning**

The FSIP noted that 4/10 schedules were successful in other parts of the organization, and the agency failed to adequately explain why they should not be tested in this case.

## **Case Summary**

The parties agreed to test compressed schedules for six months, but differed on which schedule would be appropriate. The agency wanted employees to bid on a 5-4/9 schedule, that would be available to approximately half of the unit employees. Secretaries would be ineligible to bid under the agency's proposal, because they were needed to perform administrative functions during normal business hours. The agency contended the more limited approach would not affect operations and better serve its needs.

The union sought 4/10 schedules for all employees. The union noted that the 4/10 schedule had been successful in other units, and a longer duty day would ensure greater staff presence during the most volatile time of the day. The union was also willing to allow the agency considerable flexibility in setting shift starting and ending times.

The FSIP found the agency failed to adequately explain why the 4/10 schedule worked in other units, but would not work in the unit at issue. It also concluded that the test proposed by the union would allow the parties in the long term to better judge the impact of the work schedule on all employees. The FSIP noted that, under the union's proposal, employee days off, including those of the secretaries, would be scattered throughout the week, ensuring adequate coverage. The FSIP also found that the agency's proposal lacked clarity as to how employees would bid and be selected to participate in the test.

Although this impasse was not brought to the FSIP under the terms of the Federal Employees Flexible and Compressed Work Schedules Act, the FSIP explained that the act would allow the agency to cancel the test at any time it experienced an adverse impact.

## **Full Text**

### [DECISION AND ORDER](#)

## **DECISION AND ORDER**

Local 3969, American Federation of Government Employees, AFL-CIO (Union) filed a request for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119, between it and the Department of Justice, Federal Bureau of Prisons, U.S. Penitentiary (USP), Victorville, California (Employer).

After an investigation of the request for assistance, which concerns a dispute over the type of compressed work schedule (CWS) which should be implemented under a pilot program, the Panel determined that the impasse should be resolved through an informal conference by telephone with Panel Member Joseph C. Whitaker, to be preceded by written submissions from the parties. The parties were advised that if no settlement were reached during the informal conference, Member Whitaker would notify the Panel of the status of the dispute, including the parties' final offers and his recommendation for resolving the matter. Thereafter, the Panel would take whatever action it deemed appropriate to resolve the impasse, which could include the issuance of a Decision and Order.

In accordance with the Panel's procedural determination, Member Whitaker conducted an informal conference by telephone with the parties on November 14, 2006, following receipt of their written submissions. During the course of the

-2-

teleconference, the parties discussed various modifications to their proposals but a voluntary resolution was not reached. Member Whitaker has reported to the

Panel, which has now considered the entire record, including the parties' pre-conference submissions.

## BACKGROUND

The Employer operates a complex of four correctional institutions: two medium-security facilities, the USP, which is a maximum-security facility, and a camp that houses female minimum-custody offenders. The Union represents approximately 1,200 employees at the Employer's Victorville complex. The dispute herein involves approximately 25 employees who work as case managers, counselors and secretaries on Unit Management teams at the USP. The mission of Unit Management is "to determine inmate program needs, and monitor participation to encourage pro-social institution and community behaviors that benefit inmates, staff, victims and society. This is accomplished through functional unit management and effective interaction with inmates."^ The parties are covered by a master collective-bargaining agreement that was to expire on March 8, 2001; its provisions continue to apply until a successor agreement is implemented.^

## ISSUE AT IMPASSE

The parties disagree over whether to implement a 6-month pilot for a 4/10 CWS, IX or a 5-4/9 CWS£/ for Unit Management employees at the Penitentiary.

1/ Program Statement No. 5321.07, September 16, 1999, Unit Management Manual, Federal Bureau of Prisons, U.S. Department of Justice.

2/ Currently, employees on Unit Management teams work 5 8%-schedule includes 1 late night each week, from 12:30 to 9 p.m.; days off are scheduled on Friday-Saturday, Saturday-Sunday, or Sunday-Monday. The day-watch hours are from 7:30 a.m. to 4 p.m.

3\_/ Under a 4/10 CWS, each week employees work 4 10-hour days with a 30-minute unpaid lunch break, and have 1 regular day off (RDO).

4/ Under a 5-4/9 CWS, during a biweekly pay period consisting of 80 hours, employees work 8 9-hour days and 1 8-hour day,

## -3 -POSITIONS OF THE PARTIES

### 1. The Employer's Position

The Employer proposes to allow 11 employees who work on the Unit Management teams to "bid" on a 5-4/9 CWS, and then work the schedule for a test period of 6 months. Employees who hold secretarial positions would be excluded from working a CWS. In support of its position, the Employer contends that permitting a 5-4/9 CWS for a limited number of staff would not adversely

affect existing operations and would have only minimal impact. Furthermore, since employees would work a longer day, there would be an increase in staff availability to perform other critical duties such as dining room supervision of inmates who are often violent and predatory in nature. The high volume of inmates who arrive and depart the USP Monday through Friday requires a greater staff presence by Unit Management team staff members; therefore, a CWS with only 1 RDO every 2 weeks would better serve the Employer's interests and still allow some employees to work under a compressed schedule. Secretaries are not included in the proposed 5-4/9 CWS because they are needed to provide vital administrative/clerical support 5 days a week, during normal business hours of 7:30 a.m. to 4 p.m.

## 2. The Union's Position

The Union proposes to implement, for a 6-month trial period, a 4/10 CWS option for any Unit Management team employee at the USP who is interested in trying the schedule. A 4/10 CWS appears to have worked successfully for the Employer and employees of the Unit Management staffs at one of the medium security prisons and the prison camp, and there is no reason why the same schedule should not be tested for employees at the USP; Furthermore, one employee on the Unit Management team at USP already works a 4/10 CWS; others should be afforded the benefit of working the schedule for a test period. Because it requires a longer duty day, a 4/10 CWS would increase the number of staff present during morning and evening meals, a time when inmates are particularly volatile. Work hours could be established anytime during the period from 6 a.m. to 6 p.m., thereby allowing management to place limitations on work hours within that time frame to ensure maximum coverage. In addition, a 4/10 CWS could reduce operating costs for the Employer during the week because there would not be a requirement to pay night differential before 6 p.m.

each with a 30-minute unpaid lunch break, and have 1 RDO.

## -4-CONCLUSIONS

Having carefully reviewed the parties' proposals and arguments in support of their positions, we conclude that, on balance, the Union's proposal provides the better basis for resolving the impasse. In our view, the Employer has not adequately explained why a 4/10 CWS would be inappropriate at the USP, particularly in circumstances where 4/10 CWSs already appear to be working for Unit Management in two of the four facilities at the complex. -^ Under the Union's proposal, at least two secretaries are scheduled to work each weekday to ensure adequate coverage of their duties, and the RDOs of the rest of the staff appear to be scattered throughout the workweek. The Union's proposal also provides a better opportunity for the parties to test the feasibility of implementing a CWS long term because it would offer the option to all of the employees on the Unit Management teams. Management would have the discretion to determine the

starting times for employees, enabling it to make adjustments to ensure maximum work coverage. Finally, under the provisions of the Federal Employees Flexible and Compressed Work Schedules Act of 1982, 5 U.S.C. § 6131(c)(3)(A), the Employer may seek to terminate the schedule at any time if the head of the agency determines it is having an adverse agency impact. Accordingly, we shall order the adoption of the Union's proposal.

5/ Moreover, the Employer's proposal lacks clarity concerning the type of bidding process contemplated for employees who desire to work one of the 11 CWS slots offered. This could result in grievances alleging that the selection process envisioned by management runs afoul of the definition of seniority provided in Article 19, Section e., of the parties' MCBA.

## ORDER

Pursuant to the authority vested in it by the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7119, and because of the parties' failure to resolve their dispute during the course of proceedings instituted under the Panel's regulations, 5 C.F.R. § 2471.6(a)(2), the Federal Service Impasses Panel, under § 2471.11(a) of its regulations, hereby orders the following:

The parties shall adopt the Union's final offer. By direction of the Panel.

### **Statutes Cited**

5 USC 7119

5 USC 6131